



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-, INC.

DATE: JAN. 26, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an operator of a personal finance website, seeks to employ the Beneficiary as a principal product designer. It requests his classification as a member of the professions holding an advanced degree under the second-preference, immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, “EB-2” category allows a U.S. business to sponsor a professional with a master’s degree, or a bachelor’s degree followed by five years of experience, for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not establish the Beneficiary’s possession of the minimum, post-baccalaureate experience required for the offered position.

On appeal, the Petitioner asserts that, by excluding qualifying experience the Beneficiary gained after completing the requirements of his bachelor’s degree but before receiving his diploma, the Director violated U.S. Citizenship and Immigration Services (USCIS) policy.

Upon *de novo* review, we will dismiss the appeal.

**I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS**

Employment-based immigration generally follows a three-step process. First, an employer applies for certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). The DOL must determine whether the United States has able, willing, qualified, and available workers for an offered position, and whether employment of a foreign national would hurt the wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL certifies a foreign national to permanently fill an offered position, an employer must next submit the certification with an immigrant visa petition to USCIS. *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

## II. THE REQUIREMENTS OF THE OFFERED POSITION

A petitioner must establish a beneficiary's possession of all DOL-certified, job requirements by a petition's priority date.<sup>1</sup> *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer").

Here, the labor certification states the minimum requirements of the offered position of principal product designer as a U.S. bachelor's degree, or a foreign equivalent degree, and five years of related experience. Because the Petitioner requests the Beneficiary's classification as an advanced degree professional, the requisite experience must post-date his bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a "United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty") (emphasis added).

On the labor certification, the Beneficiary attested that, after completing a baccalaureate program at an Indian university in 2003, he gained almost eight years of full-time, related experience. He listed qualifying experience from 2007 to 2015.

The Director, however, found the Beneficiary's experience insufficient. Noting that a copy of his bachelor's diploma stated its issuance in 2012, the Director concluded that the Beneficiary obtained less than five years of experience from the diploma's issuance until the petition's priority date of December 1, 2016.

On appeal, the Petitioner notes that, shortly before the petition's filing, USCIS adopted one of our decisions as Agency policy, recognizing that beneficiaries may gain post-baccalaureate experience before the issuances of their degree diplomas. *See Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017). The Petitioner therefore argues that the Director's denial breaches USCIS policy.

As the Director found, however, the facts of this case distinguish it from our adopted decision. In *O-A-*, although the beneficiary received a bachelor's diploma from an Indian university in 2007, we measured her post-degree experience from the date of a "provisional certificate" the university issued her in 2006. *Id.* at \*X. Thus, we found that the provisional certificate - together with the beneficiary's marks statements and a letter from a school official explaining the administrative delay in the issuance of her

---

<sup>1</sup> This petition's priority date is December 1, 2016, the date the DOL received the accompanying labor certification for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

diploma - established her satisfaction of all substantive degree requirements and her school's approval of the degree before the issuance of her degree diploma. *Id.*

Unlike in *O-A-*, the Petitioner here has not provided a provisional certificate or similar evidence establishing that, before the issuance of the degree diploma, the Beneficiary satisfied all substantive degree requirements and the school approved his degree. The diploma, a certificate, and other university documentation indicate the Beneficiary's completion of four years of coursework and passage of a final examination in 2003. But, unlike in *O-A-*, the record does not establish the Beneficiary's satisfaction of all degree requirements or the school's approval of the Beneficiary's degree at any time prior to the diploma's issuance in 2012. Nor does the Petitioner explain the nearly nine-year delay in the issuance of his degree diploma.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession, by the petition's priority date, of the requisite five years of post-baccalaureate experience required for the offered position. We will therefore affirm the Director's decision.

### III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage.

A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of principal product designer as \$180,000 a year. The Petitioner submitted copies of its federal income tax returns for 2015 and the Beneficiary's IRS Form W-2, Wage and Tax Statement, for 2016. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay the proffered wage in 2016, the year of petition's priority date.

In any future filings, the Petitioner must submit copies of annual reports, federal income tax returns, or audited financial statements for 2016 and, if available, 2017.

Also, USCIS records indicate the Petitioner's filing of at least 11 petitions for other beneficiaries that were pending or filed after this petition's priority date.<sup>2</sup> A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay

---

<sup>2</sup> USCIS records identify the other petitions by the following receipt numbers: [REDACTED]

the combined proffered wages of this and its other petitions from December 1, 2016, until the other beneficiaries obtained lawful permanent residence. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition where, as of its approval, the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries).

The record lacks the proffered wages or priority dates of the Petitioner's other petitions. The record also does not indicate whether the Petitioner paid any of the other beneficiaries, whether they obtained permanent residence, or whether their petitions were denied, withdrawn, or revoked. To establish its ability to pay the combined proffered wages of all applicable petitions, the Petitioner must provide this information in any future filings in this matter.

#### IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession, by the petition's priority date, of the minimum experience required for the offered position. We will therefore affirm the Director's decision. The Petitioner also did not demonstrate its ability to pay the proffered wage.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-, Inc.*, ID# 918834 (AAO Jan. 26, 2018)